



Bill Draft 2009-TDxz-34: **Rev. Laws Technical & Admin. Changes.**

2009-2010 General Assembly

Committee: Revenue Laws Study Committee
Introduced by:
Analysis of: 2009-TDxz-34

Date: May 4, 2010
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SUMMARY: *Bill draft 2009-TDxz-34 makes technical, clarifying, and administrative changes to various tax statutes and related laws.*

BILL ANALYSIS: Except as otherwise specified, this proposal would become effective when it becomes law.

Section	Explanation
VARIOUS TAX LAW CHANGES	
1	Corrects a reference.
2	Corrects a statutory cite.
3	Conforms the definition of "political party" in Chapter 105 with the definition in Chapter 163. When the General Assembly enabled taxpayers to designate part of their tax refund to a political party, the definition of 'political party' in the tax statute conformed to the definition of 'political party' in Chapter 163. The General Assembly changed the definition of 'political party' in Chapter 163 in 2006, but failed to make a conforming change in Chapter 105. The two different definitions have led to confusion because the definition under Chapter 163 recognizes three political parties while the definition in the tax statutes recognizes only two political parties.
4	Allows a public library created by an act of the General Assembly a sales and use tax refund. Unlike other public libraries that are part of a city or county government, the Public Library of Charlotte and Mecklenburg County is a creature of law. The General Assembly chartered the library in 1903 as a body corporate. Other public libraries are allowed an annual sales and use tax refund as part of a unit of local government. This section adds public libraries created pursuant to an act of the General Assembly to the list of governmental entities allowed an annual refund. Prior to 2008, the Public Library applied for semi-annual sales and use tax refunds as a charitable entity under G.S. 105-164.14(b). The General Assembly clarified the charitable refund provision in 2008 as applying to 501(c)(3) organizations to limit the expansion of the provision by a Court of Appeals decision in <i>The Lynnwood Foundation v. N.C. Department of Revenue</i> . (S.L. 2008-107). The Public Library of Charlotte and Mecklenburg County is not organized as a 501(c)(3) entity. The section is effective July 1, 2008, and applies to purchases made on or after that date. The retroactive effective date refers to the date that the 2008 clarifying legislation became effective.
5	Consolidates two subsections into one because both subsections define the retail value of a motor vehicle for purposes of the highway use tax.
6	Provides that a certificate of title issued as the result of a transfer to a revocable trust from an owner who is the sole beneficiary of the trust is exempt from the

	highway use tax. This transfer is essentially a transfer to the same owner. The current law currently exempts transfers to the same owner to reflect a name change.
7	Clarifies that the federal mailbox rule governs when a document that is mailed to the Department of Revenue is timely filed. Under the federal mailbox rule, documents submitted by mail to the IRS are considered to be filed on the date shown on the postmark stamped by the USPS. Under current NC law, a notice of appeal submitted to the Property Tax Commission by mail is considered to be filed on the date shown on the postmark stamped by the USPS. However, in regards to other documents submitted to the Department, the issue is unclear. The statutes typically provide that a return or payment must be filed by a certain date or is due by a certain date. The Department has traditionally abided by the mailbox rule. As part of the Tax Appeals changes in 2007, G.S. 105-241.11 provides that requests for review of a denial of a refund or a proposed assessment are considered timely filed on the date the Department receives it. The Department believes the law is now unclear with regards to other filings. This section clarifies the law with respect to documents submitted by mail to the Department and it makes a conforming change to the Tax Appeals statute to remove any ambiguity.
8	Clarifies a disputed tax amount must be paid before seeking judicial review.
9	Consolidates two separate notices concerning taxes owed into one notice. The two notices are a notice of a proposed assessment of tax and a notice of a failure to pay penalty if the proposed assessment of tax is not paid within 45 days. Section 3(a) requires a notice of a proposed assessment of tax to inform the taxpayer that a failure to pay penalty will apply to the assessed tax if the assessment is not paid or protested within 45 days. This change streamlines the assessment process and eliminates the mailing costs for the current, separate notice of the failure to pay penalty. Section 3(b) clarifies that the protest of a proposed assessment applies to any failure to pay penalty imposed on the underlying assessment.
10	Enables nonparticipating manufacturers to have access to the information that is used to determine their escrow payments. Currently, when there is dispute about the volume of sales in this State, the nonparticipating manufacturers have no way to verify the sales.
11	Provides that a local sales tax rate may be changed on the first day of any calendar quarter so long as the county gives the Department of Revenue at least 60 days notice. The current law requires 90 days notice and provides that a tax rate change may only be made on the first day of either January or July. The General Assembly enacted the current provision in July 2000 as part of the Streamlined Sales Tax Agreement changes. The Agreement, subsequently enacted in January 2001, provided for the quarterly dates and 60 days notice. This change will conform the local statutes to the SSTA.
PROPERTY TAX CHANGES	
12	Clarifies that liens are extinguished when property is used for low or moderate income housing within allowed statutory time period.
13	Amends the definition of "disabled veteran" to include a veteran whose death was the result of a service-connected condition.

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14	Amends G.S. 105-277.8 to add an additional requirement that must be met before property owned by a nonprofit HOA is included in the appraisal of property owned by members of the HOA instead of property owned by the HOA. This additional requirement is that all property owned by the HOA is contained within the same taxing jurisdiction as the taxable property owned by the members of the HOA to which it is appurtenant. This language was in HB 1625, which is currently in House Finance.
15	Clarifies that no deferred taxes are due and all liens are extinguished on historic properties when the historical significance of the property is lost or impaired due to fire or other natural causes.
16	Clarifies that liens are also extinguished when an historic structure is located on the sited within allowed statutory time period.
17	Removes the obsolete term "radio common carrier" from the definition of "public service company" in G.S. 105-333.
18	Adds a definition for "terminal facility" to G.S. 105-333.
19	Clarifies that the repeal of the builder's inventory property tax deferral does not affect the eligibility of certain property receiving the benefit.
20	Corrects an incorrect effective date for the combined motor vehicle system.
MOTOR FUEL TAX CHANGES	
21	Requires taxpayers who must file a return electronically to pay the tax by electronic funds transfer. Current law already requires electronic funds transfer of taxes due by corporations that must pay federal estimated tax by EFT, sales tax prepayments, utilities franchise tax payments, and taxpayers of motor fuel taxes and alternative fuel taxes. This section would expand the requirement to motor carriers and to kerosene suppliers under Article 3 of Chapter 119.
22	Changes the word "report" to "return" to more accurately reflect the type of document described.
23	Updates the reference to the International Fuel Tax Agreement.
24	Provides that a motor carrier who wants to register in North Carolina as its base state under IFTA must be incorporated in this State or authorized to transact business in this State.
25	<p>Repeals some of the purposes for which a distributor may obtain a monthly refund for the motor fuel tax the distributor paid on kerosene used for a non-highway purpose. The end-user of the fuel may apply for an annual refund of the motor fuel tax paid on the kerosene under G.S. 105-449.197 if the end-user uses the kerosene for a non-highway purpose.</p> <p>In 1994, the federal government began requiring motor fuel to be dyed if it was non-tax-paid fuel. The dyed fuel indicates that the fuel is used for a nontaxable purpose under federal law and for a non-highway use in North Carolina. Dyed fuel is not subject to either the federal or State excise tax on motor fuel. Effective July 1, 1998, the federal government began requiring diesel fuel to be dyed. Kerosene is defined as diesel fuel. By requiring kerosene to be dyed, the federal government provided a way to purchase kerosene for non-highway uses, such as heating, without having to pay the motor fuel excise tax on the fuel. However, at the time,</p>

	<p>the public feared that dyed kerosene could not safely be used in kerosene heaters. When North Carolina conformed to the federal law in 1998, it enacted this refund provision.¹ The fear that dyed kerosene would be unsafe for heaters has not materialized and the refund provision at the distributor level is no longer necessary since retailers who wish to sell kerosene for non-highway uses may purchase and sell dyed kerosene.</p> <p>Specifically, this section repeals the refund provided to a distributor who sells kerosene to a retailer and dispenses the kerosene into a dispensing device that is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene. The distributor is liable for any overpayment of the refund, even if the overpayment is attributable to an act of the retailer. It also repeals the refund provided to a distributor who sells kerosene to an airport to be used only for fueling airplanes because no tax has been refunded for this purpose for at least the past four years.</p> <p>This section becomes effective January 1, 2011, and applies to sales of kerosene made by a distributor on or after that date.</p>
26	Removes a miscellaneous word created by a redlining error.
27(a)	Provides a definition of taxicab that is substantially the same as the one that existed in G.S. 20-87(1), prior to repeal.
27(b)	Clarifies that the quarterly refund of motor fuel tax paid on fuel used to operate special mobile equipment is for the <i>non-highway</i> operation of the equipment and for equipment that is registered as SME under Chapter 20. This section becomes effective October 1, 2010, and applies to motor fuel purchased on or after that date.
28	Provides that applications for refunds must be filed in the form required by the Secretary. This change will allow for the electronic filing of refund applications.
OTHER RELATED LAW CHANGES	
29	Corrects a drafting error in S.L. 2009-520. This section becomes effective July 1, 2010; the same date S.L. 2009-520 becomes effective.
30	Clarifies reference to tax imposed on manufacturing fuel.
31	Removes a duplicate subsection header.
32	Corrects an incorrect statutory reference.
33	Repeals a redundant statute. S.L. 2009-527 adjusted the local vehicle registration fee that may be imposed by a transit authority. The subsection being repealed not only conflicted with the 2009 law change but also became unnecessary in light of the 2009 law change.
34	S.L. 2009-451 repealed the repeal of a statute inadvertently reviving the provision. Clarifies the repeal of the original provision.
EFFECTIVE DATE	

¹S.L. 1994-726 and S.L. 1998-146.
Research Division

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35	Except as otherwise noted, this act is effective when it becomes law.
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